

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LEON BRADLEY,	:	
Petitioner,	:	CIVIL ACTION
	:	
v.	:	
	:	
DONALD T. VAUGHN, et al.,	:	
Respondents.	:	No. 02-1606
	:	
	:	

MEMORANDUM AND ORDER

Schiller, J.

March 11, 2005

On November 18, 2002, this Court dismissed Petitioner Leon Bradley's petition for habeas corpus. Presently before the Court is Petitioner's motion to reopen that petition. For the reasons set forth below, Petitioner's motion is denied.

I. BACKGROUND

On May 27, 1993, a jury convicted Petitioner of first-degree murder, arson, and burglary. Phila. Ct. Common Pleas Nos. 3307, 3309, 3311 (Nov. Term 1992). Petitioner was sentenced to life imprisonment, and on May 24, 1994, Petitioner's conviction and sentence were affirmed. *Commonwealth v. Bradley*, 644 A.2d 803 (Pa. Super. Ct. 1994). Petitioner then sought allowance of appeal from the Pennsylvania Supreme Court, which was denied on October 21, 1994. *Commonwealth v. Bradley*, 651 A.2d 531 (Pa. 1994).

Subsequently, on September 19, 1995, Petitioner filed for relief under the Post Conviction Relief Act ("PCRA"), 42 PA. CONS. STAT. ANN. §§ 9541-9545 (1982). The PCRA court denied that petition on July 3, 1996, and the Superior Court of Pennsylvania affirmed on June 5, 1997.

Commonwealth v. Bradley, 700 A.2d 1022 (Pa. Super. Ct. 1997). On February 24, 1998, the Pennsylvania Supreme Court denied allocatur. *Commonwealth v. Bradley*, 716 A.2d 1247 (Pa. 1998). On April 9, 1999, Petitioner filed a second PCRA petition, which was denied as untimely because it was filed beyond the one-year period permitted by state law. 42 PA. CONS. STAT. ANN. § 9545. On February 28, 2001, the denial of the second petition was affirmed by the Superior Court of Pennsylvania. *Commonwealth v. Bradley*, 776 A.2d 1002 (Pa. Super. Ct. 2001) (Table). Finally, on September 14, 2001, the Pennsylvania Supreme Court denied Petitioner's request for discretionary review. *Commonwealth v. Bradley*, 786 A.2d 985 (Pa. 2001).

Stymied in his quest for collateral relief from Pennsylvania courts, Petitioner filed a petition for federal habeas corpus review on March 25, 2002. On November 18, 2002, this Court adopted the report and recommendation of Magistrate Judge Thomas J. Reuter and dismissed Petitioner's habeas petition as untimely because it was not filed within the one-year statute of limitations as required by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2244 (2004), and accordingly closed Petitioner's habeas action. (Nov. 18, 2002 Order at 1 n.1.) Petitioner now moves to reopen his federal habeas petition.

II. STANDARD OF REVIEW

"Upon such terms as are just," a Court may grant relief from a final judgment for several reasons, including "mistake, inadvertence, surprise, or excusable neglect . . . newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) . . . [or] any other reason justifying relief from the operation of the judgment." FED. R. CIV. P. 60(b) (2004). A party filing a motion pursuant to Rule 60(b) must do so "within a reasonable time," and if newly discovered evidence is the basis of the motion, the party must move

“not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

III. DISCUSSION

Petitioner advances three arguments which he claims require this Court to reopen his federal habeas petition. His first two grounds relate to alleged ineffective assistance of counsel. First, Petitioner contends that during his trial, his attorney chose not to call an alibi witness who would have provided exculpatory evidence. (Pet.’s Mot. to Reopen at 2.) Second, Petitioner alleges that his trial counsel should have asserted an insanity defense because of indications that Petitioner “suffers from non-psychotic brain syndrome.” (*Id.*)

Petitioner’s ineffective assistance of counsel arguments must fail. A Rule 60(b) motion filed by a state prisoner who, like Petitioner, previously filed an unsuccessful habeas petition is treated as a second or successive habeas petition “when the Rule 60(b) motion seeks to collaterally attack the petitioner’s underlying conviction.” *Pridgen v. Shannon*, 380 F.3d 721, 727 (3d Cir. 2004). Only when the “factual predicate of a petitioner’s Rule 60(b) motion attacks the manner in which the earlier habeas judgment was procured,” and not the underlying conviction itself, may the motion be adjudicated on the merits. *Id.* This distinction is crucial because the AEDPA forecloses District Courts from considering second or successive habeas petitions unless they are authorized by a three judge panel of the appropriate court of appeals. *See* 28 U.S.C. § 2244(b)(3).

Here, Petitioner’s two ineffective assistance of counsel claims relate only to his underlying conviction, and are unconnected to the manner in which his habeas judgment was procured. *See Pridgen*, 380 F.2d at 727 (holding District Court without jurisdiction to entertain Rule 60(b) motion where motion, if successful, would result in “reversal of the state court judgment” because the

“proper forum to raise these claims is in a habeas proceeding”). Because Petitioner has not obtained authorization from the Third Circuit to file a successive habeas petition, this Court is without jurisdiction to entertain Petitioner’s ineffective assistance of counsel claims.

Petitioner’s final contention is that the statute of limitations on his habeas petition should have been equitably tolled because his attorney failed to timely inform him of the Pennsylvania Supreme Court’s September 14, 2001 decision to deny Petitioner discretionary review of his second PCRA appeal. (Pet.’s Mot. to Reopen at 5.) This second PCRA appeal, filed by Petitioner on April 9, 1999, had been dismissed as untimely by the Pennsylvania courts because it was not filed within the applicable one-year statute of limitations. *See Commonwealth v. Bradley*, 776 A.2d 1002 (Pa. Super. Ct. 1997); 42 PA. CONS. STAT. ANN. § 9545.

This Court rejects Petitioner’s equitable tolling claim. Petitioner knew of his attorney’s tardiness even before he filed his federal habeas petition. An affidavit from his attorney, stating that the attorney did not inform Petitioner of the September 14, 2001 decision, is dated February 14, 2002. (Pet.’s Mot. to Reopen Ex. A.) Plaintiff, however, did not submit his federal habeas motion until March 25, 2002. Therefore, this affidavit cannot serve as “newly discovered evidence” within the meaning of Rule 60(b)(2). FED. R. CIV. P. 60(b)(2). Moreover, Petitioner’s federal habeas petition was denied based on the one-year AEDPA statute of limitations that began running from February 24, 1998, the date that the Pennsylvania Supreme Court denied allocatur for Petitioner’s *first* PCRA appeal. Hence, Petitioner had until February 25, 1999, to timely file a federal habeas petition. Petitioner’s second, untimely, PCRA appeal was unrelated to this Court’s decision, and therefore the failure of Petitioner’s attorney to inform him of the Pennsylvania Supreme Court’s decision with regard to that *second* PCRA appeal cannot serve to equitably toll AEDPA’s statute of

limitations. Finally, it is well established that an attorney error of the kind alleged here is not a basis for equitable tolling. *See Merritt v. Blaine*, 326 F.3d 157, 169-70 (3d Cir. 2003); *Brown v. Shannon*, 322 F.3d 768, 773-74 (3d Cir. 2003). Accordingly, Petitioner's federal habeas corpus petition was properly denied as untimely under AEDPA.

IV. CONCLUSION

For the reasons set forth above, Petitioner Leon Bradley's motion to reopen is denied. An appropriate Order follows.

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	:	

ORDER

AND NOW, this 11th day of **March, 2005**, upon consideration of Petitioner's Motion for Relief of Judgment to Re-Open the Dismissal of Petitioner's Habeas Corpus Petition, the response thereto, and for the foregoing reasons, it is hereby **ORDERED** that Petitioner's Motion (Document No. 25) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.